

Office of the Secretary of Defense

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§312.12. Requests for pending investigations will be denied and the requester instructed to forward another request giving adequate time for the investigation to be completed. Requesters shall be provided the telephone number so they can call and check on the status in order to know when to resubmit the request.

(b) Any individual may authorize the OIG to provide a copy of his/her records to a third part. This authorization must be in writing, must designate the recipient by name, must specify the records or portion to be provided to the recipient, and should accompany the initial request to the OIG.

[56 FR 51976, Oct. 17, 1991, as amended at 59 FR 2746, Jan. 19, 1994]

§312.6 Fees.

Requesters will be charged only for the reproduction of requested documents and special postal methods, such as express mail, if applicable. There will be no charge for the first copy of a record provided to any individual. Thereafter, fees will be computed as set forth in appropriate DoD Directives and Regulations.

§312.7 Request for correction or amendment.

(a) Requests to correct or amend a file shall be addressed to the system manager in which the file is located. The request must reasonably describe the record to be amended, the items to be changed as specifically as possible, the type of amendment (e.g., deletion, correction, amendment), and the reason for amendment. Reasons should address at least one of the following categories: Accuracy, relevance, timeliness, completeness, fairness. The request should also include appropriate evidence which provide a basis for evaluating the request. Normally all documents submitted, to include court orders, should be certified. Amendments under this part are limited to correcting factual matters and not matters of official judgment or opinions, such as performance ratings, promotion potential, and job performance appraisals.

(b) Requirements of identification as outlined in §312.4 apply to requests to correct or amend a file.

(c) Incomplete requests shall not be honored, but the requester shall be contacted for the additional information needed to process the request.

(d) The amendment process is not intended to permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Any amendments or changes to these records normally are made through the specific procedures established for the amendment of such records.

(e) Nothing in the amendment process is intended or designed to permit a collateral attack upon what has already been the subject of a judicial or quasi-judicial determination. However, while the individual may not attack the accuracy of the judicial or quasi-judicial determination, he or she may challenge the accuracy of the recording of that action.

§312.8 OIG review of request for amendment.

(a) A written acknowledgement of the receipt of a request for amendment of a record will be provided to the requester within 10 working days, unless final action regarding approval or denial will constitute acknowledgement.

(b) Where there is a determination to grant all or a portion of a request to amend a record, the record shall be promptly amended and the requesting individual notified. Individuals, agencies or DoD components shown by disclosure accounting records to have received copies of the record, or to whom disclosure has been made, will be notified of the amendment by the responsible OIG official.

(c) Where there is a determination to deny all or a portion of a request to amend a record, OIG will promptly advise the requesting individual of the specifics of the refusal and the reasons; and inform the individual that he/she may request a review of the denial(s) from the OIG designated official.

§312.9 Appeal of initial amendment decision.

(a) All appeals of an initial amendment decision should be addressed to the Assistant Inspector General for Investigations, ATTN: FOIA/PA Division, 400 Army Navy Drive, Arlington, VA 22202-2884. The appeal should be concise

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and should specify the reasons the requester believes that the initial amendment action by the OIG was not satisfactory. Upon receipt of the appeal, the designated official will review the request and make a determination to approve or deny the appeal.

(b) If the OIG designated official decides to amend the record, the requester and all previous recipients of the disputed information will be notified of the amendment. If the appeal is denied, the designated official will notify the requester of the reason of the denial, of the requester's right to file a statement of dispute disagreeing with the denial, that such statement of dispute will be retained in the file, that the statement will be provided to all future users of the file, and that the requester may file suit in a federal district court to contest the OIG decision not to amend the record.

(c) The OIG designated official will respond to all appeals within 30 working days or will notify the requester of an estimated date of completion if the 30 day limit cannot be met.

§ 312.10 Disclosure of OIG records to other than subject.

No record containing personally identifiable information within a OIG system of records shall be disclosed by any means to any person or agency outside the Department of Defense, except with the written consent of the individual subject of the record or as provided for in the Act and DoD 5400.11-R (32 CFR part 286a).

§ 312.11 Penalties.

(a) An individual may bring a civil action against the OIG to correct or amend the record, or where there is a refusal to comply with an individual request or failure to maintain any records with accuracy, relevance, timeliness and completeness, so as to guarantee fairness, or failure to comply with any other provision of the Privacy Act. The court may order correction or amendment of records. The court may enjoin the OIG from withholding the records and order the production of the record.

(b) Where it is determined that the action was willful or intentional with respect to 5 U.S.C. 552a(g)(1) (C) or (D),

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the United States shall be liable for the actual damages sustained, but in no case less than the sum of \$1,000 and the costs of the action with attorney fees.

(c) Criminal penalties may be imposed against an officer or employee of the OIG who discloses material, which he/she knows is prohibited from disclosure, or who willfully maintains a system of records without compliance with the notice requirements.

(d) Criminal penalties may be imposed against any person who knowingly and willfully requests or obtains any record concerning another individual from an agency under false pretenses.

(e) All of these offenses are misdemeanors with a fine not to exceed \$5,000.

§ 312.12 Exemptions.

(a) *Exemption for classified records.* Any record in a system of records maintained by the Office of the Inspector General which falls within the provisions of 5 U.S.C. 552a(k)(1) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I) and (f) to the extent that a record system contains any record properly classified under Executive Order 12958 and that the record is required to be kept classified in the interest of national defense or foreign policy. This specific exemption rule, claimed by the Inspector General under authority of 5 U.S.C. 552a(k)(1), is applicable to all systems of records maintained, including those individually designated for an exemption herein as well as those not otherwise specifically designated for an exemption, which may contain isolated items of properly classified information.

(b) The Inspector General of the Department of Defense claims an exemption for the following record systems under the provisions of 5 U.S.C. 552a(j) and (k)(1)-(7) from certain indicated subsections of the Privacy Act of 1974. The exemptions may be invoked and exercised on a case by case basis by the Deputy Assistant Inspector General for Investigations or the Director, Investigative Support Directorate and Freedom of Information Act/Privacy Act Division Chief which serves as the Systems Program Managers. Exemptions